

and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books, records or other items for the purpose of confirming the accuracy of the information provided by the producer.

**§ 760.708 Miscellaneous provisions and limitations.**

(a) A person ineligible under § 1437.15(c) of this title concerning violations of the Noninsured Crop Disaster Assistance Program for the 2009 crop year is ineligible for benefits under this subpart.

(b) A person ineligible under § 400.458 of this title for the 2009 crop year concerning violations of crop insurance regulations is ineligible for CAP.

(c) In the event that any request for CAP payment resulted from erroneous information or a miscalculation, the payment will be recalculated and the producer must refund any excess to FSA with interest to be calculated from the date of the disbursement to the producer. If for whatever reason the producer signing a CAP application overstates the loss level of the crop when the actual loss level determined by FSA for the crop is less than the level claimed, or where the CAP payment would exceed the producer's actual loss, the application will be disapproved for the crop and the full CAP payment for that crop will be required to be refunded with interest from date of disbursement. The CAP payment cannot exceed the producer's actual loss.

(d) The liability of anyone for any penalty or sanction under or in connection with this subpart, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(e) The regulations in parts 11 and 780 of this title apply to determinations under this subpart.

(f) Any payment to any person under this subpart will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or its proceeds.

(g) Any payment made under this subpart will be considered farm revenue for 2009 for the Supplemental Revenue Assistance Payments Program.

(h) The average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of average adjusted gross income (AGI) apply to each applicant for CAP. Specifically, a person or legal entity with an average adjusted gross non-farm income, as defined in § 1404.3 of this title, that exceeds \$500,000 is not eligible to receive CAP payments.

(i) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this title may receive, directly or indirectly, more than \$100,000 in payments under this subpart.

(j) The direct attribution provisions in part 1400 of this title apply to CAP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive a CAP payment, then the payment to the actual payee will be reduced commensurately with that interest. For CAP, unless otherwise specified in part 1400 of this title, the AGI amount will be that person's or legal entity's average AGI for the three taxable years that precede the 2008 taxable year (that is 2005, 2006, and 2007).

(k) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), FSA waives the restriction on receipt of funds under CAP but only as to beneficiaries who, as a condition of such waiver, agree to apply the CAP payments to reduce the amount of the judgment lien.

(l) For CAP, producers are either eligible or ineligible. Therefore, the provisions of §718.304 of this chapter, "Failure to Fully Comply," do not apply to this subpart.

(m) The regulations in subpart B apply to CAP. In addition to those regulations that specifically include subpart H or apply to this part, the following sections specifically apply to this subpart: §§760.113(a), 760.114, and 760.116(a).

### Subpart I—2005–2007 Crop Disaster Program

SOURCE: 72 FR 72867, Dec. 21, 2007, unless otherwise noted.

#### § 760.800 Applicability.

This part sets forth the terms and conditions for the 2005–2007 Crop Disaster Program (2005–2007 CDP). CDP makes emergency financial assistance available to producers who have incurred crop losses in quantity or quality for eligible 2005, 2006, or 2007 crop years due to disasters as determined by the Secretary under provisions of Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28). However, to be eligible for assistance, the crop subject to the loss must have been planted or existed before February 28, 2007, or, in the case of prevented planting, would have been planted before February 28, 2007.

#### § 760.801 Administration.

(a) The program will be administered under the general supervision of the Deputy Administrator for Farm Programs and will be carried out in the field by FSA State and county committees.

(b) State and county committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State committee will take any action required by this part that has not been taken by a county committee. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by that FSA county committee that is not in accordance with this part; and

(2) Require a county committee to withhold taking or reverse any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will prevent the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs may authorize State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

#### § 760.802 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Actual production* means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator for Farm Programs.

*Administrative fee* means an amount the producer must pay for Noninsured Crop Disaster Assistance Program (NAP) enrollment for non-insurable crops.

*Affected production* means, with respect to quality losses, the harvested production of an eligible crop that has a documented quality reduction of 25 percent or more on the verifiable production record.

*Appraised production* means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

*Approved yield* means the amount of production per acre, computed in accordance with FCIC's Actual Production History (APH) Program at part 400, subpart G of this title or, for crops not included under part 400, subpart G